

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

May 18, 1999

WEIL AND HOWE, INC.
Application for License to Operate as a
Competitive Electricity Provider

Docket No. 1999-251

ORDER GRANTING LICENSE

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

In this Order, we license Weil and Howe, Inc. to operate as a competitive electricity provider furnishing aggregator/broker services in Maine pursuant to Chapter 305 of the Commission's Rules.

II. APPLICATION

On April 16, 1999, Weil and Howe, Inc. applied to the Commission for a license to operate in Maine as a competitive electricity provider, as provided in Chapter 305, which became effective on February 8, 1999. On May 3, 1999, Weil and Howe, Inc. filed additional information to supplement its earlier filing.

A. Application Sufficient

The Administrative Director determined that Weil and Howe, Inc.'s application was complete and sufficient to meet the filing requirements of Chapter 305, and docketed the application in this proceeding on April 20, 1999.

B. Type of Service Proposed

Weil and Howe, Inc. proposes to act as an aggregator or broker for electric service provided to the public at retail. Weil and Howe, Inc.'s application states that the proposed licensee plans to obtain power supply arrangements for aggregated retail customer class groups throughout the State, and to assist consumer-owned utilities in obtaining standard offer suppliers in their service territories.

C. Fee Paid

With its application, Weil and Howe, Inc. paid a \$100 fee to the Commission, as required by section 2(C)(5) of Chapter 305.

III. FINANCIAL ISSUES

A. Security

Weil and Howe, Inc. will operate as an electricity broker/aggregator offering retail service only to customers with a demand greater than 100 kilowatts in Maine. Pursuant to section 2(B)(1)(a)(i) of Chapter 305, Weil and Howe, Inc. does not have to furnish a security instrument to the Commission.

B. Showing of Professional and Financial Capability

Weil and Howe, Inc. will operate as an electricity broker/aggregator in Maine, and accordingly is required to demonstrate its professional responsibility pursuant to section 2(B)(1)(b) of Chapter 305. Weil and Howe, Inc. filed supporting information to demonstrate its professional responsibility. We have reviewed that information and find that it complies with the requirements of Chapter 305.

Weil and Howe, Inc. stated that it will not hold retail customer funds. In the event Weil and Howe, Inc. wishes to hold customer funds in the future, it must first obtain authority from the Commission.

Weil and Howe, Inc. will operate as a competitive electric provider offering retail service only to customers with a demand greater than 100 kilowatts in Maine. Weil and Howe, Inc. provided information to demonstrate its financial capability to engage in its proposed business as required by section 2(B)(1)(a)(ii) of Chapter 305. We have reviewed that information and find that it complies with the requirements of Chapter 305.

IV. TECHNICAL ISSUES

A. Showing of Technical Capability

Weil and Howe, Inc. will operate as an electricity broker/aggregator in Maine, and accordingly is required to demonstrate its technical fitness to conduct its proposed business pursuant to section 2(B)(2)(c) of Chapter 305. Weil and Howe, Inc. filed supporting information to demonstrate its technical capability. We have reviewed that information and find that it complies with the requirements of Chapter 305.

B. Renewable Resource Portfolio

Weil and Howe, Inc. will operate as an electricity broker/aggregator in Maine. Pursuant to section 2(B)(4) of Chapter 305, Weil and Howe, Inc. is not required to demonstrate an ability to meet the renewable resource portfolio requirement of 35-A M.R.S.A. § 3210 and the portfolio requirement reporting rules in Chapter 311 of the Commission's rules.

V. CONSUMER PROTECTION ISSUES

A. Showing of Fitness

In its application, Weil and Howe, Inc. provided information required by Chapter 305 section 2(B)(3) related to enforcement proceedings and customer complaints. We have reviewed that information and find that it meets the requirements of Chapter 305.

B. Ability to Comply with Consumer Protection Rules

Weil and Howe, Inc. will operate as a competitive electric provider offering retail service only to retail customers with a demand greater than 100 kilowatts in Maine. Pursuant to section 2(B)(6) of Chapter 305, Weil and Howe, Inc. is thus not required to demonstrate its ability to comply with applicable consumer protection requirements.

C. Do-Not-Call List

Chapter 305 section 4(l) states that "[t]he Commission will maintain or cause to be maintained a 'Do-Not-Call' list of customers who have requested -- orally, in writing, or by commercially accepted electronic means -- that they not receive telemarketing calls from competitive electricity providers." We require that licensees use do-not-call list mechanisms already in place nationally to satisfy that requirement. To the extent that it telemarkets to Maine consumers, Weil and Howe, Inc. shall comply with the following requirements.

Weil and Howe, Inc. must comply with the requirements of the Telephone Consumer Protection Act,¹ the Telemarketing and Consumer Fraud and Abuse Prevention Act,² and related rules of the Federal Communications Commission³ and

¹47 U.S.C. § 227

²15 U.S.C. §§ 6101-6108

Federal Trade Commission.⁴ Weil and Howe, Inc. must comply with those requirements and must maintain its own do-not-call list as required by those laws and rules, for all intrastate and interstate telemarketing of Maine consumers, including both residential and business customers. Weil and Howe, Inc. shall not telemarket to Maine customers on that list, as required in Chapter 305 section 4(l)(1). Weil and Howe, Inc. shall update its do-not-call list at least monthly, and maintain copies of that list for at least six months. Weil and Howe, Inc. shall provide a copy of that list to the Commission upon request.

Further, each month, Weil and Howe, Inc. must obtain listings of Maine consumers who have arranged to be included on the do-not-call list maintained by the Telephone Preference Service of the Direct Marketing Association, Inc.⁵ Weil and Howe, Inc. shall not telemarket to Maine customers on that list, as required in Chapter 305 section 4(l)(1).

VI. ADDITIONAL PROVISIONS

Weil and Howe, Inc. must comply with all applicable requirements and limitations in Chapter 305 not explicitly waived in this Order. Weil and Howe, Inc. must also comply with all requirements and limitations in other applicable Commission rules, including any applicable future changes in Maine laws and Commission rules, and in other parts of this Order.

³47 CFR 64.1200

⁴FTC Telemarketing Sales Rule, 16 CFR Part 310

⁵Telephone Preference Service, Direct Marketing Association, Inc., P.O. Box 9014, Farmingdale, NY 11735-9014

VII. ORDERING PARAGRAPHS

Accordingly, we

1. license Weil and Howe, Inc. to operate as a competitive electricity provider in Maine; under this license, Weil and Howe, Inc. may operate only as an aggregator/broker, as defined in Chapter 305 of the Commission's Rules, to offer retail service only to customers with a demand greater than 100 kilowatts in Maine;

2. order that Weil and Howe, Inc. may not hold retail customer funds;

3. order Weil and Howe, Inc. to comply with all Do-Not-Call List requirements contained in Part V(C) of this Order to the extent that it telemarkets to Maine consumers; and

4. order that this license is effective on the date of this Order and valid until revoked by the Commission pursuant to section 3(A)(4) of Chapter 305, or abandoned by the licensee pursuant to sections 2(C)(9) and 2(C)(11) of Chapter 305 of the Commission's Rules.

Dated at Augusta, Maine this 18th day of May, 1999.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Nugent
 Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R. 110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission to the Maine Supreme Judicial Court, sitting as the Law Court, is not available, as provided in 47 U.S.C. § 252(e)(6).
3. Review of this discussion is available to an aggrieved party by bringing an action in federal district court, as provided in 47 U.S.C. § 252(e)(6).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.